

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

AIMEE L. WINTERS,

Plaintiff,

v.

Civil Action No. 4:11-cv-91 AWA/TEM

CAPITAL ONE BANK,

Defendant.

**DEFENDANT CAPITAL ONE BANK (USA), N.A.'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant Capital One Bank (USA), N.A., improperly identified in the Complaint as Capital One Bank (“Capital One”), by counsel, states as follows for its Answer and Affirmative Defenses to Plaintiff’s Complaint. All allegations not specifically admitted herein are denied.

PRELIMINARY STATEMENT

1. Capital One denies the allegations in Paragraph 1 that it violated the Federal Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691, *et seq.*, or that it failed to send Plaintiff a lawful notice of adverse action as required by the ECOA. As for the allegation in Paragraph 1 that Capital One “participates in adverse actions against consumers,” Capital One denies this allegation as vague. As it relates to the remaining allegations in Paragraph 1, Capital One admits that it accepts and processes consumer credit applications and services existing credit accounts. To the extent there are additional allegations in Paragraph 1, Capital One denies these allegations.

JURISDICTION

2. Capital One admits the allegations in Paragraph 2 that this Court has jurisdiction

over this matter pursuant to 28 U.S.C. §§ 1331 and 1691e and that venue is proper in the United States District Court for the Eastern District of Virginia, Newport News Division.

PARTIES

3. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and, therefore, they are deemed denied.

4. Capital One admits the allegations in Paragraph 4 that it is a financial institution doing business in Virginia and that it is a “creditor” as governed and defined by the ECOA, 15 U.S.C. § 1691a(e).

FACTS

5. Capital One admits the applications in Paragraph 5.

6. As to the allegations in Paragraph 6 that Plaintiff received an adverse action notice on March 29, 2011, Capital One is without knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, they are deemed denied. However, as for the allegations regarding what the statement said, Capital One states that the adverse action notice speaks for itself and denies any allegations inconsistent with the contents of the notice.

7. Capital One denies the first and third sentences of Paragraph 7 and is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 7 and, therefore, they are deemed denied.

COUNT I: VIOLATION OF EQUAL CREDIT OPPORTUNITY ACT

8. Capital One restates its responses to Paragraphs 1 through 7 of the Complaint as if fully set forth herein.

9. Capital One denies the allegations in Paragraph 9.

10. Capital One denies the allegations in Paragraph 10.

11. Capital One denies the allegations in Paragraph 11.
12. Capital One denies the allegations in Paragraph 12.
13. Capital One denies the allegations in Paragraph 13. To the extent that Plaintiff make allegations in the WHEREFORE clause following Paragraph 13, those allegations are denied.

AFFIRMATIVE DEFENSES

In addition to the affirmative defenses enumerated below, Capital One reserves the right to assert any additional defenses as may be warranted or as may be revealed by additional information received in discovery.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Any damages suffered by Plaintiff were caused by third parties over whom Capital One has no control.

WHEREFORE, Defendant Capital One moves this Court for an order dismissing Plaintiff's action against Capital One and awarding Capital One costs expended herein and such other, further, and additional relief as may be warranted.

September 14, 2011

Respectfully submitted,

CAPITAL ONE BANK (USA), N.A.

By Counsel

/s/

Bryan A. Fratkin (VSB# 38933)

Evan Elizabeth Miller (VSB# 77084)
McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219
Tel: (804) 775-1000
Fax: (804) 775-1061
Email: bfratkin@mcguirewoods.com
Email: emiller@mcguirewoods.com

*Counsel for Defendant Capital One Bank
(USA), N.A.*

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2011, a true copy of the foregoing was filed using the Court's CM/ECF system, which will send electronic notice of such filing to:

Leonard A. Bennett (VSB # 37523)
Consumer Litigation Associates, P.C.
12515 Warwick Boulevard, Suite 100
Newport News, VA 23606
(757) 930-3660
Fax: (757) 930-3662
lenbennett@clalegal.com
Counsel for Plaintiff

/s/
Evan Elizabeth Miller